

(19,665.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 200.

ANTONIO JOSE AMADEO FOR THE USE OF AND TO-  
GETHER WITH THE PASTOR MARQUEZ COMPANY, IN  
LIQUIDATION, PLAINTIFFS IN ERROR,

*vs.*

THE ROYAL INSURANCE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF PORTO RICO.

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1 At a regular term of the district court of the United States within and for the district of Porto Rico began and held at the city of Ponce in said district on the second Monday in January being also the eleventh day of that month in the year of our Lord nineteen hundred and four and of the Independence of the United States of America the one hundred and twenty eighth.

Present: The Hon. Wm. H. Holt, judge.

Among the proceedings had were the following, to wit:

|                            |   |                               |
|----------------------------|---|-------------------------------|
| ANTONIO JOSÉ AMADEO ET AL. | } | Assumpsit. Dges., \$9,000.00. |
| vs.                        |   | C. L. No. 142. Consol-        |
| ROYAL INSURANCE COMPANY    |   | dated.                        |

and

|                            |   |                                |
|----------------------------|---|--------------------------------|
| JOSÉ ANTONIO AMADEO ET AL. | } | Assumpsit. Dges., \$15,000.00. |
| vs.                        |   | C. L. No. 143. Consol-         |
| ROYAL INSURANCE COMPANY.   |   | dated.                         |

Be it remembered that heretofore, to-wit: on the 21st day of April A. D. 1903, came the plaintiff by his attorney and filed in the clerk's office of this court his declarations in these causes and also his præcipe for writ of summons in same, which declarations and præcipi are as follows, to wit:

#### Declarations.

United States District Court for Porto Rico.

|                                       |   |
|---------------------------------------|---|
| ANTONIO JOSÉ AMADEO                   | } |
| against                               |   |
| THE ROYAL INSURANCE CO. OF LIVERPOOL. |   |

Antonio José Amadeo a citizen and resident of Porto Rico plaintiffs by his attorney Charles M. Boerman, complains of the Royal Insurance Company of Liverpool a corporation organized under the laws and sovereignty of the United Kingdom of Great Britain and Ireland, defendant of a plea of trespass on the case on promises:

2 For that whereas the defendant on or about the 21st day of December, 1884, made its policy of insurance and delivered the same to plaintiff and thereby then and there for a consideration of a certain money premium to it paid by the plaintiff did insure plaintiff against loss or damage by fire to the amount of twelve hundred dollars on a building covered with tejamaní used for cooperage articles, eight hundred dollars on material and effects of cooper-

age therein stored and five hundred dollars on a building covered with galvanized iron, total 2500.00 dol-ars.

And the defendant for the consideration aforesaid did by the said policy promise and agree to make good and satisfy unto the plaintiff, his executors, administrators and assigns, all such loss and damage not exceeding the said sum of three thousand one hundred pesos, as should happen by fire to the said property whereon the said insurance was so made as aforesaid from on or about the said 21st day of December in the year 1884, until or about the 21st day of December of the year 1885 at noon, such loss or damage to be estimated according to true and actual value of said property at the time such loss or damage should happen and the amount thereof to be paid after notice and proof of such loss and damage should be made by the plaintiff in conformity with the conditions annexed to the said policy, which follows:

The conditions referred to in this policy are as follows:

No. 1. Any material misdescription of any of the property proposed to be hereby insured or of any building or place in which property to be so insured is contained or any omission to state the existence of any hazardous trade, or of any apparatus in or by which heat is produced other than grates in common fire places herein and and any misstatement of or omission to state any fact material to be known for estimating the risk whether at the time of effecting the insurance or afterwards renders this policy void as to the property affected by such misdescription, misstatement or omission respectively.

2. If after the risk has been undertaken by the company anything whereby the risk is increased be done to in or upon property hereby insured or to upon or in any building or place in which property hereby insured is contained, or if any property hereby insured is removed from the building or place in which it is herein described as being contained or if any addition to the risk arise from any other cause whatsoever without in each and every such cases the assent or sanction of the company signified by indorsement thereon or if the insured shall refuse or neglect to pay any other premium which may be demanded in consequence of any increase of risk the insurance as to the property thereby affected, ceases immediately thereupon to attach, and if by reason of such alteration or addition or from any cause whatever the company or its agents shall desire to terminate the insurance affected by this policy it shall be lawful for the company or its agents so to do by notice to the insured or his representatives and to require this policy to be given up for the purpose of being cancelled provided that in any such case the company shall refund to the insured a rateable proportion for the unexpired time hereof for the premium received for the insurance.

3rd. This policy does not cover property held in trust or on commission, unless expressly described as such, nor china glass, looking glasses, jewels, glass, clocks, watches, trinkets, medals, curiosities,

manuscripts, prints, paintings, drawings, sculptures, musical mathematical and philosophical instruments, patterns, models, and moulds unless specially mentioned in the policy, nor deeds, bonds, bills of exchange promissory notes, money, security for money, stamps, and books of account nor gun-powder, nor loss or damage by fire happening during the existence of any invasion foreign enemy rebellion, insurrection, riots, civil commotion, military or usurped power or martial law within the country or locality in which the property insured is situated unless proof be made to the satisfaction of the directors that such a loss or damage was not occasioned by or connected with but occurred from a cause or causes independent from the existence of such invasion foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial

4 law, and this policy does not cover loss or damage occasioned by or through any earthquake, or hurricane, or by or through the spontaneous fermentation or heating of the subject insured, nor goods destroyed or damaged while undergoing the process by which the application of fire heat is necessary nor loss or damage by explosion except loss or damage to a building or property contained therein, caused by explosion of gas if such building, not being a building in which gas is manufactured.

4th. No insurance proposed to the company is to be considered in force until the premium be actually paid, no receipts for any premium of insurance shall be valid or available for any purpose whatsoever except as are issued and printed from the company's office and signed by one of the clerks or agents of the office and impressed with the seal of the company, and any condition or proviso contained indorsed upon, or referred to in any such receipt shall be taken as part of this policy.

5th. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law unless notice thereof be given to the company and the subsistence of the insurance in favor of such other person being declared by memorandum indorsed there, or by or on behalf of the company.

6th. On the happening of any loss or damage by fire to any of the property hereby insured, the insured must forthwith give notice in writing thereof to the company and within fifteen days at latest deliver to the company as particular an account as may be reasonable or practicable of the several articles or matters damaged or destroyed by fire and also of all other articles and matters insured by this company's policy, with the estimated value of each of them respectively having regard to their several values at the time of the fire and also of the nature and amount of the loss or damage occasioned to each or any such articles or matters, and of the interest of the insured therein, and in support thereof give all such vouchers proofs and explanations and other evidence as may be reasonable required by or in behalf of the company together with, if

5 required, a statutory declaration of the truth of the account, and in default thereof no claim in respect of such loss or

damage shall be payable or sustainable unless and until such notice, account proof and explanation or evidence respectively shall have been given or produced as aforesaid, and such statutory declaration if required, shall have been made.

7th. No profit nor advantage of any kind is to be included in any claim for loss or damage under this policy and if the claim be in any respect fraudulent, or if any false statutory declaration be made or used in support thereof, or if the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured, all benefit under this policy is forfeited.

8th. In case of damage by removal of property to escape conflagration this company will contribute thereto in the proportion the sum insured hereby shall bear to the whole value of such property before removal, but the company shall not be held liable for property stolen.

9th. The company if they think fit, at their option reinstate or replace the property damaged or destroyed instead of paying the amount of the loss or damage and may join with any other company or insurers in so doing in cases where the property is also insured elsewhere.

10th. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made under this policy the company without being deemed wrongdoers, may by their authorized officers and servants or others enter into and for a reasonable time remain in possession of such building or place property or effects for all reasonable purpose relating to or in connection with the insurance thereby affected and this policy shall be evidence of leave and license and authority for that purpose.

11th. The insured must give notice to the company of any insurance or insurances made elsewhere the property hereby insured or any part thereof the particulars of which must be indorsed on the policy and unless such notice be given and indorsement be made the insured will not be entitled to any benefit under this policy.

12th. If at the time of any loss or damage by fire happening to any property hereby insured there be any subsisting insurance or insurances, whether effected by the insured or by any other person covering the same property this company shall not be liable to pay or contribute in respect of such loss or damage more than its rateable proportion of such loss or damage.

13th. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property hereby insured either exclusively or together with any other property in and subject to the same risk only shall be subject to average, the insurance on such property under this policy shall be subject to average in like manner.

14th. If any difference shall at any time arise between the company and the insured or any claimant under this policy as to the

amount of any loss or damage by fire and no fraud be alleged, every such difference as and when the same arises shall be referred to the arbitration and decision of two in different persons one to be chosen by the party claiming and the other by the company, or in case of disagreement between them then of an umpire to be chosen by the arbitrators before entering on the reference provided that if one of the parties fail to name an arbitrator within ninety days after being called upon by the other party to do so subsequently to furnishing of the proofs and evidence and other matters as stipulated by the foregoing condition No. 6, then in such case shall the other party be at liberty to choose both arbitrators who shall agree upon an umpire before entering upon the evidence reference, and the cost of the reference shall be in the discretion of the arbitrators or umpire as the case may be who shall award by whom and in what manner the same shall be paid, and the decision of the arbitrators or umpire as the case may be shall be final and binding on all parties and this conditions shall be deemed and taken to be an agreement to refer as aforesaid, and it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire as the case may be shall be a condition precedent to the liability or obligation of the company to pay or satisfy any claim under this policy for loss or damage in respect of which any such difference may have arisen and to the enforcement of any such claim.

15th. In all cases where this policy is void or ceases to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof will be forfeited.

16th. The directors of the company shall not be sued nor made personally responsible for this insurance until the funds of the company are first exhausted and the agents shall in no case be responsible either on account of any legal or any other investigation which they might find it necessary to institute for the satisfaction of the company nor can their personal property be attached on account of any alleged loss by the insured.

17th. If in any case the company shall be unable to reinstate or repair the buildings because of any provisions in the acts in force for regulating the alignment of streets or directions of buildings the company shall in every such case only be liable to pay such sum as would be requisite to reinstate or repair such buildings if the same could lawfully be reinstated to their former condition.

18th. It is hereby declared and agreed that if the property covered by this policy shall at the breaking out of any fire be collectively of greater value than the sum insured thereon, then this company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen—

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest on the said prop-



erty to the amount of the said sum so by the defendant insured thereon as aforesaid.

And the plaintiff further avers that on the 7th day of February 1885, the said property was consumed and destroyed by fire whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss and damage did not happen by means of any invasion foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law, earthquake, hurricane, cyclon- spontaneous fermentation or heating, volcanic eruption, application of process by fire heat, or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the loss and damage as the nature of the case would admit.

And the plaintiff further avers that there was not at or since the time of making the said policy any other insurance on the said property except as in said policy mentioned and that the said building was not at or since that time appropriated, applied or used to and for the purpose of carrying on or exercising therein any trade business or vacation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in said policy mentioned on his part to be performed and kept, the defendant has not yet paid to the plaintiff the said amount of the loss and damage aforesaid or any part thereof but refuses so to do to the damage of the plaintiff of nine thousand dollars and therefore he brings his suit.

C. M. BOERMAN,  
Plaintiff's Att'y.

U. S. OF AMERICA, }  
District of Porto Rico, } ss:

José Antonio Amadeo being under oath says: that the foregoing declaration is true to his knowledge in substance and fact.

ANTONIO JOSÉ AMADEO.

Sworn to before me this 6th day of April 1903.

A. AGUAYO,  
Deputy Clerk.



9 In the United States District Court for the District of Porto Rico.

JOSÉ ANTONIO AMADEO

against

THE ROYAL INSURANCE COMPANY OF LIVERPOOL. }

José Antonio Amadeo, a citizen and resident of Porto Rico, plaintiff by his attorney Charles M. Boerman, complains of the Royal Insurance Company of Liverpool a corporation organized under and by the laws of the United Kingdom of Great Britain and Ireland, defendant, of a plea of trespass on the case on promises: For that whereas the defendant on the 15th of September 1884, made its policy of insurance and delivered the same to the plaintiff and for the consideration therein expressed, to it paid by the plaintiff, promised the plaintiff in the terms of the said policy and the conditions thereto annexed, which said policy and conditions here follow in these words and figures to wit:

This policy of insurance witnesseth that Doctor Antonio J. Amadeo, estate owner of Quebrada Arenas, Maunabo, P. R. hereinafter called the insured, having paid to the undersigned as authorized agents of the Royal Insurance Company, hereinafter called the company the sum of \$43.75 cur. money for insuring against loss or damage by fire as hereinafter mentioned, the property hereinafter described in the sum or several sums, following to wit:

\$3500.00 currency on the rum distilling machinery and apparatus contained in the rum distillery of the sugar estate "Quebrada Arenas" property of the insured, @ 1½%—the building serving the purposes of such distillery, is constructed of wood and roofed partly, with zinc and partly with tiles, and is insured in the northern office for £1000, whilst the remainder of the works and buildings on said estate are insured with the just mentioned Co. for £4000, more and with this company \$2500, under policy No. 2647834.

The company hereby agree with the insured (but subject to the conditions on the back thereof which are to be taken as part of this policy) that if the property above described or any part thereof shall be destroyed or damaged by fire at any time between the 15th day of September 1884 and four o'clock in the afternoon of the 15th day of September 1885, the company will out of their capital stock and funds make good or pay to the insured the value of the property so destroyed or the amount of such damage thereto to the amount not exceeding in respect of each or any of the several matters above specified the sum set opposite thereto respectively, and not exceeding in the whole \$3500.00 dollars and also not exceeding in any case the amount of the insurable interest therein of the insured at the time of the happening of such fire. In witness whereof we, two of the directors of the said company by their authorized agents have hereunto set out hands and have caused the

common seal of said company to be hereunto affixed dated at Porto Rico, this 15th day of September in the year of our Lord 1884, and issued there.

R. BROCKBANK,  
A. W. RAYNER, Directors,  
By their attorneys FEDRSEN WILLINK & CO.,  
Agents of the Company.

The conditions referred to in this policy are as follows:

1. Any material misdescription of any of the property proposed to be hereby insured or of any building or place in which property to be so insured is contained or any omission to state the existence of any hazardous trade or of any apparatus in or by which heat is produced other than grates in common fire places therein and any misstatement of or the omission to state any fact material to be known for estimating the risk whether at the time of effecting the insurance or afterwards, renders this policy void as to the property affected by such misdescription, misstatement or omission respectively.

2. If after the risk have been undertaken by the company any thing whereby the risk is increased be done to in or upon property hereby insured or to upon or in any building or place in which property hereby insured is contained, or if any property hereby insured is removed from the building or place in which it is herein described as being contained or if any addition to the risk arise from any other cause whatsoever without in each and every of such cases the assent or sanction of the company signified by indorsement thereon or if the insured shall refuse or neglect to pay any further premium which may be demanded in consequence of any increase of risk, the insurance as to the property thereby affected ceased immediately thereupon to attach, and if by reason of such alteration or add-tion or from any cause whatever the company

11 or its agents shall desire to terminate the insurance effected by this policy it shall be lawful for the company or its agents so to do by notice to the insured or his representatives and to require this policy to be given up for the purpose of being cancelled, provided that in any such case the company shall refund to the insured a ratable proportion for the unexpired time thereof for the premium received for the insurance.

3rd. This policy does not cover property held in trust or on commission unless expressly described as such, nor china glass, looking glasses, jewels, glass, clocks, watches, trinkets, medals, curiosities, manu-cripts, prints, painting, drawings, sculptures, musical, mathematical and philosophical instruments, patterns, models and moulds, unless specially mentioned in the policy, nor deeds, bonds, bills of exchange, promissory notes, money security for money stamps, and books of account, nor gun-powder, nor loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power

or martial law, within the country or locality in which the property insured is situated unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with but occurred from a cause or causes independent of the existence of such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion military or usurped power or martial law. And this policy does not cover loss or damage occasioned by or through any earthquake or hurricane or by or through the spontaneous fermentation or heating of the subject insured, nor goods destroyed or damaged while undergoing any process by which the application of fire-heat is necessary, nor loss or damage by explosion except loss or damage to a building or property contained therein by explosion of gas in such building not being a building in which gas is manufactured.

4th. No insurance proposed to the company is to be considered in force until the premium be actually paid. Nor receipts for any premiums of insurance shall be valid or available for any purpose whatever except as are printed and issued from the company's office and signed by one of the clerks or agents of the office and  
12 impressed with the seal of the company, and any condition or proviso so contained in endorsed upon or referred to in any such receipt shall be taken as part of this policy.

5. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law unless notice thereof be given to the company and the subsistence of the insurance in favor of such other person be declared by a memorandum endorsed thereon by or on behalf of the company.

6. On the happening of any loss or damage by fire to any of the property hereby insured the insured must forthwith give notice in writing thereof to the company and within fifteen days at latest deliver to the company as particular an account as may be reasonable practicable of the several articles and matters damaged or destroyed by fire and also of all other articles and matters insured by this company policy with the estimated value of each of them respectively having regard to their several values at the time of the fire, and also of the nature and amount of the loss and damage occasioned to each or any of such article or matter, and of the interest of the insured therein, and in support thereof give all such vouchers proofs and explanations and other evidence as may be reasonably required by or in behalf of the company together with if required a statutory declaration of the truth of the account, and in default thereof no claim in respect of such loss or damage shall be payable or sustainable unless and until such notice account, proof and explanation or evidence respectively shall have been given or produced as aforesaid, and such statutory declaration if required shall have been made.

7. No profit nor advantage of any kind is to be included in any

claim for loss or damage under this policy and if the claim be in any respect fraudulent or if any false statutory declaration be made or used in support thereof, or if the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured, all benefit under this policy is forfeited.

8th. In case of damage by the removal of property to escape conflagration this company will contribute thereto in the proportion the sum insured hereby shall bear to the whole value of such property before removal, but the company shall not be held liable for property stolen.

9th. The company may if they think fit at their option reinstate or replace the property damaged or destroyed instead of paying the amount of the loss or damage and may join with any other company or insurers in so doing in cases where the property is also insured elsewhere.

10th. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made, under this policy the company without being deemed wrong doers may by their authorized officers and servants or others enter into and for a reasonable time remain in possession of said building or place or property of effects for all reasonable purposes relating to or in connection with the insurance hereby effected and this policy shall be evidence of leave and licence and authority for that purpose.

11th. The insured must give notice to the company of any insurance or insurances made elsewhere of the property hereby insured or any part thereof the particulars of which must be endorsed on the policy and unless such notice be given and endorsement be made the insured will not be entitled to any benefit under this policy.

12th. If at the time of any loss or damage by fire happening to any property hereby insured there be any other subsisting insurance or insurances whether effected by the insured or by any other person covering the same property, this company shall not be liable to pay or contribute in respect of such loss or damage more than its rateable proportion of such loss or damage.

13th. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property hereby insured either exclusively or together with any other property in and subject to the same risk only shall be subject to average, the insurance of such property under this policy shall be subject to average in like manner.

14th. If any difference shall at any time arise between the company and the insured or any claimant under this policy as to the amount of any loss or damage by fire and no fraud be alleged, every such difference as and when the same arises shall be referred to the arbitration and decision of two indifferent persons one to be chosen by the party claiming and the other by the company, or in case of disagreement between them of an umpire to be chosen by the arbi-

trators before entering on the reference provided that if one of the parties fail to name an arbitrator within ninety days after being called upon by the other party to do so subsequently to furnishing of the proofs and evidence and other matters as stipulated by the foregoing condition No. 6—then in such case shall the other party be at liberty to choose both arbitrators who shall agree upon an umpire before entering upon the evidence reference—and the costs of the reference shall be in the discretion of the arbitrators or umpire as the case may be who shall award by whom and in what manner the same shall be paid, and the decision of the arbitrators or umpire as the case may be shall be final and binding to all parties and this condition shall be deemed and taken to be an agreement to refer as aforesaid. And it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire as the case may be shall be a condition precedent of the liability or obligation of the company to pay or satisfy any claim under this policy for loss or damage in respect which any such difference may have arisen and to the enforcement of any such claim.

15th. In all cases where this policy is void or ceases to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof will be forfeited.

16th. The directors of the company shall not be sued nor made personally responsible for this insurance until the funds of the company are first exhausted, and the agents shall in no case be  
15 responsible either of account of any legal or any other investigation which they may find it necessary to institute for the satisfaction of the company, nor can their personal property be attached on account of any alleged loss by the insured.

17th. If in any case the company shall be unable to reinstate or repair the buildings because of any provisions in the acts in force for regulating the alignment of streets or the erection of buildings the company shall in every such case only be liable to pay such sum as would be requisite to reinstate or repair such buildings if the same could lawfully be reinstated to their former condition.

18th. It is hereby declared and agreed that if the property covered by this policy shall at the breaking out of any fire be collectively of greater value than the sum insured thereon then this company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen. \* \* \*

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest on the said property to the amount of the said sum so by the defendant insured thereon as aforesaid.

And the plaintiff further avers that on the 7th of February 1885, the said property was consumed and destroyed by fire, whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss

and damage did not happen by means of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, earthquake, hurricane, spontaneous fermentation or heating, application of process of fire-heat or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the said loss and damage as the nature of the case would admit.

16 And the plaintiff further avers that there was not at or since the time of making the said policy any other insurance of the said property except as mentioned in said policy and that the said building was not at or since that time appropriated, applied or used to and for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in the said policy mentioned on his part to be kept and performed, the defendant has not yet paid to the plaintiff the said amount of the loss and damage aforesaid or any part thereof but refuses so to do.

To the damage of the plaintiff of \$15,000 and therefore he brings his suit.

C. M. BOERMAN,  
Plaintiff's Attormney.

U. S. OF AMERICA,  
District of Porto Rico, } ss:

Antonio J. Amadeo, sworn says that the foregoing declaration is true in substance and fact.

ANTONIO JOSÉ AMADEO.

Sworn to before me this 6th day of April 1903.

A. AGUAYO,  
Deputy Clerk.

Præcipe for Summons.

DISTRICT OF PORTO RICO :

|                                       |   |               |
|---------------------------------------|---|---------------|
| JOSÉ ANTONIO AMADEO                   | } | No. 142, 143. |
| vs.                                   |   |               |
| ROYAL INSURANCE COMPANY OF LIVERPOOL. |   |               |
| JOSÉ ANTONIO AMADEO                   | } |               |
| vs.                                   |   |               |
| ROYAL INSURANCE COMPANY.              |   |               |

Clerk of said court :

Please issue summons in the above case returnable to May term.

C. M. BOERMAN,  
Attorney for Plaintiff.



Thereupon there were issued out of the clerk's office of said court certain writs of summons in this cases directed to the marshal of this district and against the said defendant, which writs of summons are as follows, to wit:

17 In the District Court of the United States for Porto Rico.

|  |   |                |
|--|---|----------------|
| ANTONIO JOSÉ AMADEO                      | } | C. L. No. 142. |
| vs.                                      |   |                |
| THE ROYAL INSURANCE COMPANY OF LIVERPOOL |   |                |

Summons.

UNITED STATES OF AMERICA, }  
District of Porto Rico, } ss:

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded to summon the Roayl Insurance Co. of Livarpool if it can be found in your district, to ba and appear before the United States district court for the district of Porto Rico, at the court rooms of said court in the city of Ponce on the 11th day of May 1903, then and there to answer unto Antonio José Amadeo on an action assumpsit damages \$9000. and have you then and there this writ.

Failing to so appear judgement may be entered against the said defendant by default.

Witness: the Hon. Wm. Holt, judge of the district court of the United States for Porto Rico, this 21st day of April A. D. 1903, and of the Independence of the United States of America the 127th.

Attested:

RICARDO NADAL Clerk,  
By A. AGUAYO, Deputy.

In the District Court of the United States for Porto Rico.

|   |   |          |
|---|---|----------|
| ANTONIO JOSÉ AMADEO                       | } | No. 143. |
| vs.                                       |   |          |
| THE ROYAL INSURANCE COMPANY OF LIVERPOOL. |   |          |

Summons.

UNITED STATES OF AMERICA, }  
District of Porto Rico. }

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded to summon the Royal Insurance Company of Liverpool if it can be found in your district, to be and ap-



pear before the United States district court for the district of Porto Rico at the court rooms of said court in the city of Ponce on the 11th day of May 1903, then and there to answer unto Antonio José Amadeo on an action assumpsit, damages \$15,000, and have you then and there this writ.

Failing to so appear judgement may be entered against the said defendant by default.

Witness: the Hon. Wm. H. Holt, judge of the United States district court for Porto Rico, this 21st. day of April A. D. 1903, and of the Independence of the United States of America the 127th.

Attest:

RICARDO NADAL, Clerk,  
By A. AGUAYO, Deputy.

And afterwards to wit: on the 23rd. day of April in the year last aforesaid came the marshal of this district to whom the said writs were in form aforesaid directed and returned the same into the clerk's office of the court aforesaid with his proceeding endorsed thereon as follows, to wit:

#### Return on Service of Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico, } ss:

I hereby certify and return that I served the annexed writ on the Royal Insurance Company of Liverpool by handing to and leaving a true and correct copy thereof with Nicasio Arzuaga a member of the firm of Sobrinos de Ezquiaga chief agents within the district of the Royal Insurance Co. of Liverpool, personally at San Juan in said district on the 23rd. day of April A. D. 1903.

E. S. WILSON,  
U. S. Marshal.  
J. A. MILLER, Deputy.

#### Return on Service of Writ.

UNITED STATES OF AMERICA, }  
District of Porto Rico, } ss:

I hereby certify and return that I served the annexed writ on the therein named The Royal Insurance Company of Liverpool by handing of and leaving a true and correct copy thereof with Nicasio Arzuaga a member of the firm of Sobrinos de Ezquiaga chief agents of the Royal Insurance Company of Liverpool within the district, personally at San Juan in said district on the 23rd day of April A. D. 1903.

E. S. WILSON,  
U. S. Marshal.  
J. L. MILLER, Deputy.

19 And afterwards, to wit: on the 11th day of May in the year last aforesaid came the defendant by its attorneys and filed in the clerk's office of said court a demurrer to the declaration in each of these cases, which said demurrers are as follows to wit:

In the District Court of the United States for Porto Rico.

|                          |   |                      |
|--------------------------|---|----------------------|
| ANTONIO JO-É AMADEO      | } | Common Law. No. 142. |
| VS.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Demurrer to the Declaration.

Now come- the defendant above named by its attorneys Dexter & Hord, and demurs to the declaration herein filed

First. For a reason that it does not state a cause of action; second: because upon the face thereof and by the admissions of the plaintiff contained therein, it appears that the said alleged cause of action is prescribed and barred by the statute of limitation and the period of prescription is provided in the civil and commercial codes.

DEXTER AND HORD,  
Attorneys for Defendant.

In the District Court of the United States for Porto Rico, Sitting at Ponce.

|                         |   |                |
|-------------------------|---|----------------|
| JOSÉ ANTONIO AMADEO     | } | C. L. No. 143. |
| VS.                     |   |                |
| ROYAL INSURANCE COMPANY |   |                |

Demurrer to Declaration.

Now comes defendant above mentioned, by its attorneys Dexter and Hord, and demurs to the declaration herein filed:

First. For the reason that it does not state a cause of action; second: because upon the face thereof and by the admission of the plaintiff contained therein, it appears that the said alleged cause of action is prescribed and barred by the statute of limitations and the period of prescription as provided in the civil and commercial code.

DEXTER AND HORD,  
Attorneys for Defendant.

20 And the same day in the year aforesaid came the plaintiff in said causes and filed in the clerk's office of the court aforesaid a joinder on demurrer, which said joinder on demurrer is as follows:

## Joinder on Demurrer.

J. A. AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 142.

And the plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above set forth are sufficient in law for him to maintain his aforesaid action and he is ready to verify the same as the court shall direct: Wherefore inasmuch as the defendant has not denied the said declaration the plaintiff prays judgement and his damages etc. to be adjudged to him.

C. M. BOERMAN,  
Plaintiff's Attorneys.

## United States District Court for Porto Rico.

J. A. AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 143.

And the plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above set forth are sufficient in law for him to maintain his aforesaid action and he is ready to verify the same as the court shall direct: Wherefore inasmuch as the defendant has not denied the said declaration the plaintiff prays judgement and his damages etc. to be adjudged to him.

C. M. BOERMAN,  
Plaintiff's Attorney.

Thereupon the following entries were made upon the journal of said court in said causes, to wit:

JOSÉ ANTONIO AMADEO  
vs.  
TH- ROYAL INSURANCE Co. } No. 142.

21 Now comes the defendant by its attorneys Dexter and Hord and files a demurrer to the declaration herein and the same — been heard is overruled and the defendant thereupon files a plea.

JOSE ANTONIO AMADEO  
vs.  
THE ROYAL INSURANCE COMPANY. } No. 143.

Now comes the defendant herein by its attorneys Dexter & Hord and files a demurrer to the declaration herein and the same — been heard is overruled and the defendant thereupon files a plea.

And the said pleas filed by the defendant herein are as follows, to wit:

In the United States District Court for Porto Rico, Sitting at Ponce.

|                          |            |
|--------------------------|------------|
| ANTONIO JOSÉ AMADEO      | } No. 142. |
| vs.                      |            |
| ROYAL INSURANCE COMPANY. |            |

Plea.

Now comes defendant above named, by its attorneys Dexter and Hord and for its various pleas to the declaration herein filed says:

First. Defendant never promised and is not indebted to plaintiff in manner and form as in the said declaration alleged; and of this it put itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit; and of this it puts itself upon the country.

Third. For third and further plea to the said declaration defendant says that plaintiff ought not to have or recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notorial document on — 1885.

Fourth. For a fourth and further plea to said declaration defendant says that plaintiff ought not to recover herein for the  
22 reason that there has been no such damage or loss as set forth in the said declaration, and this the defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that within fifteen days after the fire described in said declaration there was not delivered to defendant a particular account as was reasonable practicable of the several articles or property damaged or destroyed by fire and of all other articles and matters insured under said policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; also stating the nature and amount of the loss or damage occasioned to each and any such article or matter, and of the interest of the insured therein, and in support thereof such vouchers, proofs and explanations and other evidence as was required by and on behalf of defendant, together with a statutory declaration of the truth of all the same, although all of said settlements, proofs declarations and explanations were demanded by the defendant; and no such proofs, claims, settlements or declarations have at any time been delivered to defendant; and of this defendant puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that the plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying the articles or giving in detail the information and proofs demanded of plaintiff by the defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy, and was fraudulent in this, to wit: that the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much *the less* than the amount contained in said policy, and that this insurance, sued on herein, was obtained by the false and fraudulent representations of plaintiff and without the knowledge of defendant as to the real value of said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of the said fire the property so described in the said policy sued on herein was greatly less the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For seventh and further plea defendant says that plaintiff ought — to have and recover herein for the reason that the said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein, was caused and occasioned by the procurement, means, design and voluntary act of the plaintiff, who caused the said property set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

DEXTER & HORD,  
Attorneys for the Defendant.

Miguel L. Arzuaga, being duly sworn, upon his oath says that he is one of the agents of the defendant company in the above entitled cause, that he has read the foregoing plea, and that the facts therein stated are true to the best of his knowledge and belief.

MIGUEL ARZUAGA.

Swor- to and subscribed before me this May 11th, 1903.

A. AGUAYO,  
D. C. U. S. Court.

|                          |   |                      |
|--------------------------|---|----------------------|
| JOSÉ ANTONIO AMADEO      | } | Common Law. No. 143. |
| VS.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Plea.

Now comes defendant above named, by its attorneys Dexter and Hord and for its various pleas to the declaration herein filed, says:  
First. Defendant never promised and is not indebted to plaintiff

in manner and form as in said declaration alleged; and of this it puts itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover  
24 herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit; and of this it puts itself upon the country.

Third. For a third and further plea to the said declaration defendant says that plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and proceeds thereof having been transferred, sold and assigned by him by notarial document on — 188—.

Fourth. For a fourth and further plea to the said declaration defendant says that plaintiff ought not to recover herein for the reason that there has been no such damage or loss as set forth in the said declaration, and this defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that within fifteen days after the fire described in said declaration there was not delivered to the defendant a particular account as was reasonable practicable of the several articles or property damaged or destroyed by fire, and of all other articles and matters insured under the said policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; also stating the nature and amount of the loss or damage occasioned to each and any such article or matter, and of the interest of the insured therein, and in support thereof of such vouchers, proofs and explanations and other evidence as was required by and on behalf of the defendant, together with a statutory declaration of the truth of all of the same, although all of said settlements, proofs, declaration and explanations were demanded by the defendant; and no such proofs, claims, settlements or declarations and explanations have at any time been delivered to defendant; and of this defendant puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying  
25 the articles or giving in detail the information and proofs demanded of plaintiff by defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy, and was fraudulent in this, to wit: that the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much less than the amount contained in said policy, and that his insurance, sued on herein, was obtained by the false and fraudulent representations of the plaintiff and without the knowledge of the defendant as to the real value of

the said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of said fire the property so described in the said policy sued on herein was greatly less the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For a seventh and further plea defendant says that plaintiff ought not to have or recover herein for the reason that said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein was caused and occasioned by the procurement, means, designs and voluntary act of the plaintiff, who caused the said property to be set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

DEXTER & HORD,  
Attorneys for Def't.

Miguel L. Arsuaga being duly sworn, upon his oath says that he is one of the agents of the defendant company in the above entitled cause, that he has read the foregoing plea, and that the facts stated therein are true to the best of his knowledge and belief.

MIGUEL L. ARSUAGA.

Sworn to and subscribed before me this May 11th, 1903.

A. AGUAYO,  
D'ty Clerk U. S. Court.

And afterwards to wit: on the 12th day of May in the year aforesaid, 1903, came the plaintiff by his attorney and filed in the clerk's office of said court his replication in the said causes, which  
26 said replications are as follows, to wit:

United States District Court for Porto Rico.

|                          |   |                    |
|--------------------------|---|--------------------|
| J. A. AMADEO             | } | Com. Law. No. 142. |
| vs.                      |   |                    |
| ROYAL INSURANCE COMPANY. |   |                    |

1. And the plaintiff says that as to the first plea of the defendant whereof it puts itself upon the country the plaintiff does the same.

2. And as to the second and third pleas of the defendant the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having his aforesaid action and that he is not bound by law to answer the same, and this he is ready to verify, wherefore for want of sufficient plea in this behalf the plaintiff prays judgment.

3. As to the fourth plea, the plaintiff puts himself upon the country.



4. As to the fifth plea plaintiff states that all the notices proofs and other papers required by the policy to be delivered within fifteen days were so delivered, and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers there was no fraud intended or committed neither in the policy nor in the proofs or claim, and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff says that the fire was not of incendiary origin or by his negligence and of this he puts himself upon the country.

C. M. BOERMAN,  
Plaintiff's Attorney.

UNITED STATES OF AMERICA, }  
District of Porto Rico, } ss.

J. A. Amadeo on oath says that the foregoing pleas are true in substance and fact.

ANTONIO J. AMADEO.

Sworn to before me this 12th day of May, 1903.

A. AGUAYO,  
Deputy Clerk U. S. Court.

United States District Court for Porto Rico.

27 J. A. AMADEO }  
vs. } Com. Law. No. 143.  
ROYAL INSURANCE Co. }

1. And the plaintiff says that as to the first plea of the defendant whereof it puts itself upon the country the plaintiff does the same.

2. And as to the second and third pleas of the defendant the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having *from* having his aforesaid action and that he is not bound by law to answer the same, and this he is ready to verify, wherefore for want of a sufficient plea in this behalf the plaintiff prays judgment.

3. As to the fourth plea the plaintiff puts himself upon the country.

4. As to the fifth plea plaintiff states that all the notices proofs and other papers required by the policy to be delivered within fifteen days were so delivered, and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers that there was no fraud intended or committed neither in the policy nor in the proofs or claim, and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff says that the fire was not of in-

cendiary origin or by his negligence and of this he puts himself upon the country.

C. M. BOERMAN,  
Plaintiff- Attorney.

UNITED STATES OF AMERICA, }  
District of P. R., } ss :

J. A. Amadeo on oath says that the foregoing pleas are true in substance and fact.

ANTONIO J. AMADEO.

Sworn to before me this 12th day of May 1903.

A. AGUAYO,  
D. C. U. S. Court.

And afterwards to wit: on the 13th day of May in the year last aforesaid the defendant by its attorneys filed in the clerk's office of said court a motion to strike certain parts of the replication, which said motion is as follows, to wit:

United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 142. C. L.

28

Motion to Strike.

Now comes the defendant by its attorneys Dexter and Hord and moves to strike from the replication herein the following paragraphs, or part thereof, to wit:—

Those paragraphs or part of the said replication which purport to be a replication to the fifth, sixth and seventh pleas of the defendant herein for the reason that the same are argumentative, trivial and not good pleading.

DEXTER AND HORD,  
Attorneys for Defendant.

United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 143.

Motion to Strike.

Now comes the defendant herein by its attorneys Dexter and Hord, and moves the court to strike from the replication herein the following paragraphs or parts thereof, to wit:—

Those paragraphs or parts of the said replication which purport to be a replication to the fifth, sixth and seventh pleas of the defendant herein for the reason that the same are argumentative, trivial and not good pleading.

DEXTER AND HORD,  
Attorneys for Defendant.

Thereupon the following entries were made upon the journal of said court in said causes, to wit:—

|                         |   |          |
|-------------------------|---|----------|
| JOSÉ ANTONIO AMADEO     | } | No. 142. |
| vs.                     |   |          |
| THE ROYAL INSURANCE CO. |   |          |

Now comes the defendant herein by its attorneys Dexter and Hord and files a motion to strike part of plaintiff's replication and the same being heard is submitted.

|                         |   |          |
|-------------------------|---|----------|
| JOSÉ ANTONIO AMADEO     | } | No. 143. |
| vs.                     |   |          |
| THE ROYAL INSURANCE CO. |   |          |

29 Now comes the defendant herein by its attorneys Dexter and Hord and files a motion to strike part of plaintiff's replication and the same being heard is submitted.

And afterwards to wit, on the 18th day of May in the year aforesaid the following entries were made upon the journal of said court in said causes, to wit:

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO          | } | No. 142. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

Now comes the plaintiff herein by his attorney C. M. Boerman Esqr. and tenders an amended complaint to which the defendant objects and the same being allowed to be filed the defendant excepts.

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO          | } | No. 143. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

Now comes the plaintiff herein by his attorney C. M. Boerman Esqr. and tenders an amended complaint to which the defendant objects and the same being allowed to be filed the defendant excepts.

And the said amendment to declaration filed by the plaintiff in these cases is as follows to wit:

## United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO  
 against  
 THE ROYAL INSURANCE COMPANY. }

The plaintiff by leave of court amends his complaint declaration as follows,

In the title of the case after the name of the plaintiff add the following words: "for the use and together with the Pastor Marquez Company in liquidation."

In the body of the declaration add at the end of it the following paragraphs:

30 "And plaintiff avers that on or about August 1885 the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

C. M. BOERMAN,  
 Plaintiff's Attorney.

A. J. Amadeo on oath says that the foregoing amendment to the declaration is true.

ANTONIO J. AMADEO.

Sworn to this 18th day of May 1903.

A. AGUATO, D. C.

## United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO  
 against  
 THE ROYAL INSURANCE COMPANY. }

The plaintiff by leave of court amends his complaint declaration as follows:

In the title of the case after the name of the plaintiff add the following words: "for the use of and together with the Pastor Marquez Company in liquidation."

In the body of the declaration add at the end of it the following paragraph:

"And plaintiff avers that on or about August 1885 the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

C. M. BOERMAN,  
 Plaintiff's Attorney.

A. J. Amadeo on oath says that the foregoing amendment to the declaration is true.

ANTO. J. AMADEO.

Sworn to this May 18th 1903.

A. AGUAYO, D. C.

And afterwards to wit; on the 21st day of May, 1903 the following entries were made upon the journal of said court, in said causes, to wit:

JOSÉ ANTONIO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 142.

31 Now comes the defendant herein by its attorneys Dexter and Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

JOSÉ ANTONIO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 143.

Now comes the defendant herein by its attorneys Dexter and Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

And on the 25th day of May in the year last aforesaid come the defendant by its attorneys and filed in the clerk's office of said court a motion to consolidate, which said motion is as follows, to wit:

United States District Court for Porto Rico.

ANTONIO J. AMADEO  
vs.  
NORTHERN ASSURANCE COMPANY. } No. 141.

ANTONIO J. AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 142.

ANTONIO J. AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 143.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 144.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 145.

Motion to Consolidate.

32 Now come the defendants in the above numbered and styled causes by their attorneys Dexter and Hord and move

the court to consolidate the said suits and in support of said motion represent that the said suits are between the same parties and that the issues therein are the same; that by consolidating said causes great expenses will be saved to the parties and to this court and otherwise much unnecessary time of the court will be taken and great trouble be had in the procurement of juries to try the same.

DEXTER AND HORD,

Attorneys for Defendants.

And afterwards to wit; on the 27th — May in the year last afore-said an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO ET AL.   | } | No. 142. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO ET AL.   | } | No. 143. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

|                              |   |          |
|------------------------------|---|----------|
| FEDERICO AMADEO              | } | No. 144. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

|                              |   |          |
|------------------------------|---|----------|
| FEDERICO AMADEO              | } | No. 145. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

The motion to consolidate the above entitled causes is called up heard and sustained to the extent of consolidating cases No. 142 and 143 and also of consolidating cases No. 144 and 145, and cases No. 142 and 143 are to be tried together and 144 and 145 are to be tried together.

And afterwards to wit; on the 12th day of January A. D. 1904 an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:

|    |                            |   |          |
|----|----------------------------|---|----------|
| 33 | JOSÉ ANTONIO AMADEO ET AL. | } | No. 142. |
|    | vs.                        |   |          |
|    | THE ROYAL INSURANCE CO.    |   |          |

and

|  |                            |   |          |
|--|----------------------------|---|----------|
|  | JOSÉ ANTONIO AMADEO ET AL. | } | No. 143. |
|  | vs.                        |   |          |
|  | THE ROYAL INSURANCE CO.    |   |          |

The demurrer to the second plea herein is overruled to which plaintiff-excepts, wherein plaintiff-files a replication to the second plea to which the defendant files a demurrer, which is sustained and plaintiffs except.

And the said replication to the second plea filed by the plaintiff-herein is as follows to wit:

United States District Court for Porto Rico.

J. A. AMADEO ET AL. }  
 VS.  
 ROYAL INSURANCE CO. }

And as to the second and third pleas of the defendant above pleaded the plaintiffs say that the same limitation and prescription therein pleaded was inter-upted by extrajudicial demand and this the plaintiffs pray may be inquired into by the country.

Wherefore the plaintiffs pray judgment and their costs, etc.

C. M. BOERMAN,  
 Plaintiffs' Attorney.

Ermelindo Salazar under oath says that the foregoing plea to replication is true in substance and fact.

ERMELINDO SALAZAR.

Sworn to before me this 12th day of January, 1904.

A. AGUAYO, D. C.

And the said demurrer to replication to second plea filed by the defendant herein is as follows, to wit:

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO }  
 VS. } No. 142.  
 ROYAL INSURANCE CO. }

34

ANTONIO JOSÉ AMADEO }  
 VS. } No. 143.  
 ROYAL INSURANCE CO. }

Now comes defendant herein by its attorneys, and demurring to plaintiff's replication to the second plea herein says that the same is insufficient in law; whereupon etc.

ROYAL INSURANCE COMPANY,  
 By F. H. DEXTER &  
 HENRY F. HORD, Its Attorneys.

And afterwards, to wit: on the 15th day of January in the year last aforesaid 1904, an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:



|                              |   |          |   |               |
|------------------------------|---|----------|---|---------------|
| ANTONIO JOSÉ AMADEO ET AL.   | } | No. 142. | } | Consolidated. |
| VS.                          |   |          |   |               |
| THE ROYAL INSURANCE COMPANY  |   |          |   |               |
| and                          |   |          |   |               |
| ANTONIO JOSÉ AMADEO          | } | No. 143. |   |               |
| VS.                          |   |          |   |               |
| THE ROYAL INSURANCE COMPANY. |   |          |   |               |

## Judgment.

On this 15th day of January, 1904, came on these causes for hearing the same having been heretofore consolidated by order of court and both parties *been* present by their respective attorneys and plaintiffs having heretofore refused to plead further to the second plea filed herein by defendant and now failing to offer proofs as to the other issues made and tendered herein, judgment is by the court entered for the defendant. Wherefore it is by the court ordered and adjudged that the plaintiffs herein Antonio José Amadeo for himself and for the use and benefit of the firm of Pastor Marquez and Company and Pedro Salazar as liquidating partner of the said Pastor Marquez and Company take nothing by either of their said suits and that the defendant go hence without day and recover of and from the said plaintiffs all costs in this behalf incurred or expended for which execution may issue. To all of which plaintiffs by their attorney then and there in open court, excepted.

It is further ordered that plaintiffs have until March 15th, 1904 to file their bill of exceptions herein and that the amount of the appeal bond be fixed at the sum of five hundred dollars, for said causes jointly.

On the 14th day of March, 1904, the plaintiffs filed their bill of exceptions which is as follows, to wit :

## United States District Court for Porto Rico.

|                              |   |                           |
|------------------------------|---|---------------------------|
| JOSÉ ANTONIO AMADEO ET AL.   | } | Common Law. Nos. 142-143, |
| against                      |   |                           |
| THE ROYAL INSURANCE COMPANY. |   | Consolidated.             |

Be it remembered that at a term of the district court of the United States for Porto Rico held in Ponce on the 12th day of January, 1904, a cause therein pending wherein Jose Antonio Amadeo and The Pastor Marquez Company were plaintiffs and The Royal Insurance Company of Liverpool was defendant, came on to be heard before the Honorable William H. Holt judge of said court upon the

demurrer of the plaintiffs aforesaid to the second plea of the defendant to the declaration, and thereupon the court overruled said demurrer, to which ruling of the court the plaintiffs excepted.

Thereupon the plaintiffs having filed a replication to said second plea of the defendant, the defendant demurred to said replication and the court upon hearing the argument of said demurrer sustained the demurrer to said replication, to which ruling the plaintiffs excepted.

This bill may not be necessary to the appeal,—in fact the court so thinks, but counsel desiring it, it is approved and signed this March 14, 1904.

WM. H. HOLT, Judge.

And on the 20th day of September, 1904, the plaintiffs filed a petition for a writ of error and assignment of errors in these cases as follows, to wit :

#### Petition for a Writ of Error.

United States District Court for Porto Rico.

ANTONIO J. AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

The plaintiffs in the above entitled cause feeling themselves aggrieved by the judgment entered on the 15th day of January 1904, come now by Charles M. Boerman their attorney and petition this court for an order allowing said plaintiffs to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States made and provided in that behalf.

And your petitioners will for ever pray.

C. M. BOERMAN,  
Attorney for the Plaintiffs.

#### Assignment of Errors.

United States District Court for Porto Rico.

ANTONIO J. AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

Come now the plaintiffs in the above entitled case and file the following assignment of errors upon which they will rely — their prosecution of the writ of error in the above entitled cause.

1. The court erred in overruling the demurrer of the plaintiffs to the second plea of the defendant to the declaration, and by deciding that said plea of limitation is a good plea, contrary to the law.

2. The court erred in sustaining the demurrer of the defendant to the replication of the plaintiffs to the said second plea of the defendant and in deciding and adjudging that there is no interruption of limitation by extrajudicial demand of plaintiff- contrary to law.

3. The court erred in rendering judgment for the defendant and against the plaintiffs upon the pleadings in said cause and that said judgment is contrary to the law and the facts as stated in the pleadings in said cause.

Wherefore the said plaintiffs in error pray that the judgment of said court be reversed and such directions be given that full force and efficacy may insure to plaintiffs by their said pleas.

C. M. BOERMAN,  
Attorney for Plaintiffs.

37 And on the 21st of September, A. D. 1904, the court made the following order, to wit:

In the District Court of the United States for Porto Rico.

ANTONIO J. AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

Upon motion of C. M. Boerman attorney for plaintiff, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein.

This at San Juan, Porto Rico, this twenty first day of September, A. D. 1904.

CHAS. F. McKENNA,  
Judge of the United States Court for Porto Rico.

Appeal Bond. Filed and Approved Dec. 20th, 1904.

United States District Court for Port Rico.

José ANTONIO AMADEO and PASTOR MARQUEZ AND COMPANY }  
VS.  
ROYAL INSURANCE CO. }

Know all men by these presents that we, Pastor Marquez and Co. as principal and Lucas Amadeo of Barros and Felipe Salazar of Ponce as sureties are held to the defendant above named The Royal

Insurance Company of Liverpool in the sum of five hundred dollars to be paid to the said company or its assigns to which payment well and truly to be made we bind ourselves and each of us jointly and several-y and our successors and assigns firmly by these presents.

Sealed with our seals this 30th day of November, 1904.

Whereas the above named plaintiffs have sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the United States district court for Porto Rico. Now therefore the condition of this obligation is such that if the above named plaintiffs should prosecute said writ to effect and answer all costs and damages if they shall fail to make good their plea then this obligation to be void, otherwise to remain in full virtue and force.

PASTOR MARQUEZ & CO., En Liqui.  
E. SALASAR.  
FELIPE SALAZAR.  
LUCA- AMADEO.

Lucas Amadeo and Felipe Salazar each of them being duly sworn says that he is worth \$2,500.00 over and above his legal liabilities.

FELIPE SALAZAR.  
LUCAS AMADEO.

S-or-n to before me this 30th day of November, 1904.

A. AGUAYO,  
De'ty Clerk U. S. Court.

Before me the undersigned, clerk of the district court of the United States for Porto Rico personally appeared F. Salazar and Lucas Amadeo the persons who signed as securities in the within bond, and acknowledged the same to be their free act and deed.

This 30th day November 1904.

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

Petition and Order. Filed Dec. 30th, 1904.

In the District Court of the United States for Porto Rico.

|   |   |  |
|---|---|--|
| FEDERICO AMADEO, for the Use of and<br>Jointly with The Pastor Marquez Com-<br>pany, in Liquidation,<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 142 and 143,<br>Consolidated. |
|---|---|--|

Petition.

Chas. M. Boerman, attorney for the plaintiffs and appellants in the above entitled cause, shows to this honorable court that, because

of the great distance of Porto Rico from Washington, thirty days is too short for the preparation and transmission of the record in this case, and therefore moves and prays this court to grant sixty days additional within which the said transcript of record may be transmitted to the Supreme Court of the United States.

C. M. BOERMAN,  
Attorney for Plaintiffs.

Order.

The court hereby orders, upon the foregoing petition, that the time for filing the transcript of record be and hereby is extended to ninety days from the date of the issuance of the writ of error.

(Signed)

CHAS. F. McKENNA,  
Judge U. S. Dist. Court for Porto Rico.

In the District Court of the United States for Porto Rico.

I, H. H. Scoville, clerk of said court, do hereby certify, that the foregoing is a true and correct transcript of the record of the cause therein stated on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at the city of Ponce P. R., this 28th day of February A. D. 1905.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

40 [Endorsed:] No. 142 & 143. In the district court of the United States for Porto Rico. Antonio J. Amadeo vs. Royal Insurance Company. Transcript of record.

41 In the District Court of the United States for Porto Rico.

|  |   |  |
|--|---|--|
| ANTONIO JOSÉ AMADEO, for the Use of<br>and Together with The Pastor Marquez<br>Company, in Liquidation,<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 142 and 143,<br>Consolidated. |
|--|---|--|

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Chas. F. McKenna, judge of the district court of the United States for Porto Rico, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court of the United States for Porto Rico, before you, between Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, and The Royal Insurance Company, defendant in error, a manifest error has happened to the great damage of the said Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, as by the complaint appears.

We being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to  
42 the Supreme Court of the United States, together with this writ, so as to have the same at the city of Washington, District of Columbia, on the 30th day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 31st day of December, in the year of our Lord one thousand nine hundred and four.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,  
Clerk of the U. S. Dist. Court for Porto Rico.

Allowed by  
CHAS. F. MCKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

43 [Endorsed :] No. 142 & 143 In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation. vs. The Royal Insurance Co. Writ of error.

44 In the District Court of the United States for Porto Rico.

|   |   |  |
|---|---|--|
| ANTONIO JOSÉ AMADEO, for the Use of and<br>Together with The Pastor Marquez Com-<br>pany, in Liquidation<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 142 and 143,<br>Consolidated. |
|---|---|--|

Citation.

UNITED STATES OF AMERICA, ss :

The President of the United States to the Royal Insurance Company and F. H. Dexter, Esq., its attorney, Greeting :

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for Porto Rico, wherein Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 31st day of December, A. D. 1904, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

### Return on Service Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico, } ss :

I hereby certify and return that I served the annexed citation on the therein-named The Royal Insurance Company by handing to and leaving a true and correct copy thereof with F. H. Dexter its



attorney personally at San Juan in said district on the 5th day of January, A. D. 1905.

E. S. WILSON,  
U. S. Marshal.  
— —, Deputy.

46 [Endorsed:] No. 142 & 143. In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. The Royal Insurance Co. Citation. Marshal's fees, service, \$2.00. Expenses —. D.

Endorsed on cover: File No. 19,665. Porto Rico D. C. U. S. Term No. 200. Antonio Jose Amadeo, for the use of and together with The Pastor Marquez Company, in liquidation, plaintiffs in error, vs. The Royal Insurance Company. Filed March 15th, 1905. File No. 19,665.